

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Serenity L., et al.,	:	Case No. 1:10-cv-076
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
Ohio Department of	:	
Rehabilitation and Corrections,	:	
et al,	:	
	:	
Defendants.	:	

ORDER

Before the Court is the Defendants' motion to dismiss Plaintiffs' amended class action complaint under Fed. R. Civ. P. 12(b)(1) and (b)(6). (Doc. 19) Plaintiffs oppose the motion (Doc. 23), and Defendants have filed their reply. (Doc. 25) Defendants have also filed a motion for an order to show cause why Plaintiff Guy B.'s claims should not be dismissed for failure to exhaust his administrative remedies. (Doc. 20) Plaintiffs oppose this motion (Doc. 22), and Defendants have filed their reply. (Doc. 26)

FACTUAL BACKGROUND

The First Amended Complaint generally alleges that the ten named Plaintiffs are indigent Ohio residents who suffer from various psychiatric conditions and illnesses. Each Plaintiff has been incarcerated in the past in an Ohio prison under the

auspices of the Ohio Department of Rehabilitation and Correction ("ODRC"). Plaintiff Guy B. was incarcerated when the First Amended Complaint was filed. Plaintiffs allege that, without proper treatment, their psychiatric disabilities and disorders seriously interfere with their basic life abilities. Plaintiffs are qualified for various re-entry programs and services such as parole, conditional release or post-release supervision.

Plaintiffs require accommodations in the form of appropriate services and pre-release planning to successfully transition from incarceration to the community. They also require disability accommodations to assist them in applying for and obtaining public benefits for which they are eligible.

Plaintiffs allege that Defendants fail to provide these accommodations, preventing them from making a successful transition to the community. Plaintiffs seek declaratory and injunctive relief against Defendants to "... insure that class members receive the accommodations, including but not limited to 'sufficient supplies of medication, connections to mental health and other support services, and housing,' to which they are entitled under the law." (Am. Compl. at ¶5)

Paragraphs 6 through 100 of the Amended Complaint describe the circumstances of each of the ten named Plaintiffs. These allegations generally include background information about Plaintiffs, their psychiatric histories and diagnoses, and in

many cases describe undeniably tragic backgrounds. Many of the Plaintiffs have experienced repeated hospitalizations, as well as incarceration in various jails and prison facilities on various offenses. For example, Serenity L. alleges that she gave birth to a child at 16, and was incarcerated for the first time in her early 20's following the death of another child, as well as her brother, her father, and her step-mother. She has been diagnosed with bipolar disorder, post-traumatic stress disorder and schizophrenia. She has had several stays in drug rehabilitation programs, and has been in almost continuous contact with the criminal justice system since her first incarceration. Her most recent release from ODRC's custody was in November 2008, when she was placed on post-release control until November 2009. She currently resides in Xenia, Ohio. Prior to her release from prison, she alleges that ODRC did not provide her any discharge planning or assistance in completing benefits applications. She had no source of income upon her release, and she fears that she will not be able to maintain psychiatric stability, which she believes will result in her reincarceration.

Anthony G. alleges he was released from Oakwood Correctional Facility on March 20, 2009, and he is currently committed at Summit Behavioral Healthcare in Cincinnati. He has a lengthy history of mental illness, as well as alcohol and drug abuse. He has been institutionalized for most of his adult life, has been

incarcerated twice before in an Ohio state prison, and several times in county jails. He has taken various psychotropic medications over the years, and without medication he manifests disturbing behaviors such as exposing himself, emitting loud outbursts and screams, urinating in public, and digging through other people's belongings. He has been placed on suicide watch while institutionalized.

When he was released from ODRC's custody in March 2009, he alleges that ODRC left him at an emergency shelter. He did not receive any substantive pre-release planning, despite ODRC's own assessment that he needs "close case management services as he is lower functioning ...". (Am. Comp. ¶19) He was not linked with a case worker, was not provided assistance in locating housing, and was given only a 14-day supply of his essential psychotropic medications. A shelter social worker noticed his distress and assisted him in getting medications and filling out benefit applications. Nevertheless, about three weeks later, he announced at a food bank that he had a gun. He was delusional at the time and did not actually have a gun, but he was arrested for inducing panic. He remained incarcerated at the county jail for a month, found to be incompetent, and transferred to Summit. He alleges that if he is released again without sufficient assistance and planning, he will likely reoffend due to his mental disabilities. (¶¶14-25)

Diane F. was most recently released from prison in December 2009; she has had six previous periods of incarceration over the past ten years. She has been diagnosed with schizophrenia and bipolar disorder, and has suffered their incapacitating effects for most of her adult life. She also abuses drugs and alcohol when her psychological symptoms become unmanageable. Proper medication allows her to remain calm, coherent, and stable. She has never been provided with assistance in applying for benefits during her prior terms of incarceration. After her latest release, she was returned to her drug-infested Cuyahoga County neighborhood, despite her requests to be sent to a halfway house in Montgomery County. Her requests for assistance with benefit applications were denied. She alleges the lack of appropriate pre-release planning causes her increasing anxiety and fear that she will decompensate and reoffend. (¶¶39-44)

Alan G. is 47 years old and was released from prison in January 2009. He was homeless until May 3, 2010 when he was convicted of theft and breaking and entering, after he was seen scrounging for scrap metal in a dumpster. When the amended complaint was filed, Alan was awaiting sentencing. He suffers from bipolar disorder, schizophrenia, antisocial disorder and post-traumatic stress disorder. He has taken several psychotropic medications and currently takes Seroquel, which helps stabilize his condition. He suffers from severe

reoccurring hallucinations which are eased by regular medication. He states that he will resort to street drugs to "self medicate" when he is not able to maintain a stable course of proper medication. He has been incarcerated six times, and is currently on post-release control. He has never received any comprehensive discharge planning, was not offered help in applying for benefits, and was not linked to a case worker or a local agency for assistance upon release. The last time he was released from ODRC custody he was given a two-week supply of medication. He alleges that it is highly likely he will be reincarcerated due to ODRC's repeated failure to assist him with proper and necessary pre-release planning services. (¶¶61-70)

The allegations concerning each of the other named Plaintiffs include similar details. For instance, Alice G. did not receive any discharge planning or referrals to mental health professionals following her October 2008 release. She was fortunate to obtain services through a community re-entry program and her condition stabilized. John V. was released without adequate discharge planning or assistance from ODRC in February 2010, and now resides at a VA Hospital. He alleges he contacted the VA out of desperation because ODRC failed to provide him with any assistance, other than a fourteen day supply of medication.

Plaintiff Guy B. was incarcerated when the amended complaint was filed, and was due to be released in October 2010. He has

exhibited a pattern of release from incarceration, followed by reoffending behavior which has resulted in his reincarceration. He has been diagnosed with bipolar disorder and schizophrenia, and requires consistent medications to control symptoms such as verbal hallucinations, paranoia, and suicide attempts. He had not yet received discharge planning at the time the amended complaint was filed, and he alleges that he does not know where he will go to seek assistance upon his release. (¶¶ 92-100)

The Defendants are the Ohio Department of Rehabilitation and Correction and its Director, Ernie Moore, and the Ohio Department of Mental Health and its Director, Sandra Stephenson. Both individuals are sued in their official capacities only. ODRC is generally responsible for Ohio's prison system; ODMH is charged with oversight and administration of public mental health services across Ohio. ODRC developed and administers "The Ohio Plan," which is intended to promote successful reintegration of prison inmates into their home communities. (¶111)

ODRC's Offender Transitional Release Plan sets forth procedures governing pre-release planning that are meant to facilitate an offender's successful release. Plaintiffs allege that when prisoners with psychiatric disabilities are released without reasonable accommodations that would allow them access to public programs and benefits, the goals of successful transition and community re-entry are thwarted. (¶113) ODRC's Offender

Transitional Release Planning policy states that ODRC staff should determine whether inmates may qualify for public benefits such as Social Security disability, Medicaid, Medicare, and/or food stamps. Released inmates are also given a fourteen-day supply of necessary psychotropic medications, and a list of community medical referral sources for follow-up care. (¶¶115-116) While ODRC thus acknowledges the need for pre-release planning, Plaintiffs allege that ODRC releases prisoners with psychiatric disabilities from the highly structured prison environment to the community, on a faulty assumption that they will be self-sufficient. (¶¶117-118)

According to the amended complaint, ODRC delegated to ODMH some of its obligations to provide pre-release discharge planning for inmates with psychiatric disabilities. ODMH is responsible for ensuring that these inmates complete Medicaid applications prior to their release, and sending the applications to the proper county's Medicaid agency for processing. Plaintiffs allege that neither ODRC nor ODMH ensures that inmates are provided with a sufficient supply of medication to manage the transition period from their release from incarceration to their enrollment in Medicaid. Providing reasonable accommodations, including requiring completed benefit applications, connecting inmates directly to community mental health service providers, and providing an "adequate supply" of medications, would allow

Plaintiffs and the class they seek to represent to successfully transition from incarceration to the community. Without these services, the abrupt transition from a highly structured prison environment to the community will exacerbate the symptoms of the diseases from which Plaintiffs suffer. (§§131-134)

Plaintiffs also allege that the lack of adequate pre-release transition planning services has a disparate impact upon inmates with psychiatric disabilities, making a successful transition back to the community significantly more difficult for them. They allege that Defendants release them from custody without appropriate service referrals, appointments or linkages. Many inmates are unable to see a psychiatrist until after their temporary supply of medications is gone, resulting in gaps in treatment and deterioration of their condition. Plaintiffs allege that additional pre-release planning and assistance is a reasonable accommodation for their disabilities under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. Other reasonable accommodations denied to Plaintiffs are appropriate case management services, and assistance with obtaining mental health services, transportation, medication management, housing, food, and other available community-based services. (§§148-167)

Plaintiffs further allege that Defendants fail to submit timely applications for various federal benefits (including SSDI

and food stamps) on Plaintiffs' behalf prior to their release from incarceration. Many inmates with psychiatric disabilities qualify for these benefits, and may have received them prior to their incarceration. (§§169-180) Many inmates with psychiatric disabilities wind up in homeless shelters, which pose special risks due to crowding, stress, or increased risk of attack due to Plaintiffs' unusual behaviors. Offenders on post-release control may risk sanctions if they leave these shelters without permission, but their uncontrolled symptoms often cause them to do so. Plaintiffs allege that Defendants fail to submit timely applications on behalf of these inmates for public or supportive housing assistance upon their release. (§§182-189)

The claims and the relief Plaintiffs seek are set forth in Paragraphs 191-229. Plaintiffs seek declaratory and injunctive relief, and none of them assert claims for actual damages. Their first claim, under the Americans with Disabilities Act, alleges that Defendants have failed to provide reasonable accommodations for Plaintiffs' disabilities, which has caused Plaintiffs an increased risk of reincarceration, due to their inability to conform their conduct to the requirements of the law.

Plaintiffs' second claim, under Section 504 of the Rehabilitation Act, alleges that Defendants discriminate against Plaintiffs by failing to ensure that Plaintiffs submit benefit applications, and by the failure to provide the various post-release transition

planning services alleged in the complaint. The third and fourth causes of action allege violations of the Medicaid Act and the Food Stamp Act, respectively, alleging Defendants are required to ensure that they have applied for benefits under these programs. The fifth and sixth claims allege Eighth Amendment violations based on Defendants' deliberate indifference to Plaintiffs' serious medical needs, and a violation of their due process rights. Plaintiffs seek a declaratory judgment that Defendants' practices are unlawful, an order enjoining further violations and requiring Defendants to provide the panoply of pre- and post-release services described in the amended complaint.

Defendants move to dismiss the amended complaint on several grounds. They primarily argue that Plaintiffs lack standing to sue, because they have not alleged an injury in fact nor established an imminent threat of future harm that can be remedied by an injunction. Defendants also contend that Plaintiffs' various statutory and constitutional claims are fatally flawed in several respects.

ANALYSIS

1. Standard of Review

Defendants' motion is brought under Fed. R. Civ. P. 12(b)(1) and (6). In reviewing a motion to dismiss under these subsections, the Court accepts as true the well-pleaded factual allegations of the complaint. A claim will survive if those

allegations are "... enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true." Jones v. City of Cincinnati, 521 F.3d 555, 559 (6th Cir. 2008), citing Bell Atlantic Corp. v. Twombly, 550 U.S.544 (2007).

In Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009), the Supreme Court expressly held that a complaint will survive a Rule 12 challenge only if its well-pleaded factual allegations are sufficient to state a claim for relief that is plausible on its face. Facial plausibility requires pleading facts that permit a reasonable inference that the defendant is liable for the alleged misconduct. If a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" Id. at 1949 (quoting Twombly, 550 U.S. at 556-557).

2. Plaintiffs' Standing

Defendants contend that Plaintiffs lack standing to seek any relief because they have not alleged a sufficient injury in fact, or a threat of imminent or concrete harm. They argue that this Court therefore lacks jurisdiction over all of Plaintiffs' claims. All but one of the Plaintiffs had been released from ODRC's custody by the time the complaint was filed. Plaintiffs allege that they are "afraid" of re-incarceration, or that they are "nervous" or "upset" about their living conditions. Several

Plaintiffs allege an inability to find a job, and others are homeless. Other Plaintiffs concede that they have obtained mental health services and found places to live, and that they have maintained their psychiatric stability since being released from incarceration. None of them allege that, since being released, they have been returned to ODRC custody as a result of Defendants' actions or inactions.

Defendants moved to dismiss Plaintiffs' original complaint in this case on similar grounds, arguing that none of the Plaintiffs had standing to pursue their claims for injunctive relief. (See Doc. 15) Plaintiffs chose not to respond to the motion and instead filed their amended complaint, which added allegations made solely on information and belief, that all of the Plaintiffs fear an "imminent" threat of reincarceration and returning to ODRC's custody based on Defendants' prior failures to provide them with pre-release planning and services. Defendants argue that this sort of conclusion does not adequately allege a particularized threat of imminent injury that demonstrates Plaintiffs' standing to seek injunctive relief.

The amended complaint also added the claims of Plaintiff Guy B., who was incarcerated when the amended complaint was filed. Guy B. alleges that he does not know how he will receive treatment or medication after he is released. Defendants argue that his alleged "lack of knowledge" and his fears about his

future do not show an imminent or concrete injury or threat of harm that can be remedied by Plaintiffs' claims.

In addition, Defendants contend that Plaintiffs have not alleged facts plausibly supporting their contention that the conditions Plaintiffs describe - homelessness, delay in receiving benefits, or impaired access to medical care - were proximately caused by Defendants. The causal link between Plaintiffs' allegations of harm and Defendants' conduct must be more than speculative. Here, there are too many other obvious factors that contribute to such conditions. For example, Robert W. alleges that he had been living at a YMCA, but funding was cut for that housing program. (¶34) Many of the Plaintiffs admit to long-term problems with substance abuse and addiction, which contributes to the problems they describe. And the fact that some of the Plaintiffs may not have received Medicaid or food stamps immediately upon their release from incarceration cannot plausibly be attributed solely to ODRC's failure to provide what Plaintiffs assert is adequate assistance with various benefit applications.

Moreover, even if a causal link had been adequately pled, Defendants argue that Plaintiffs' alleged injuries would not be redressed by the injunctive relief they seek. It would be sheer speculation to assume that, at some future point, any of the Plaintiffs will commit additional serious crimes, be convicted of

those crimes, and thereafter placed into ODRC custody. Absent such a chain of events, none of the Plaintiffs could obtain any relief from the injunction they seek in this suit.

With respect to Guy B., Defendants' motion for an order to show cause (Doc. 20) contends that he failed to exhaust his administrative remedies prior to filing suit. This failure also mandates dismissal of his claims pursuant to 42 U.S.C. §1997e(c)(1), even if his allegations demonstrated his standing and a plausible basis for an award of injunctive relief.

Plaintiffs do not deny that they must establish their standing in order to proceed. The Sixth Circuit has held in that regard:

To establish initial standing to bring suit, a plaintiff must demonstrate (1) he or she has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, as opposed to conjectural or hypothetical; (2) the injury is fairly traceable to the defendant's challenged action; and (3) it is likely, not speculative, that the injury will be redressed by a favorable decision.

Cleveland Branch, NAACP v. City of Parma, Ohio, 263 F.3d 513, 523-524 (6th Cir. 2001) (internal citations omitted).

The Court must conclude that the Plaintiffs have not satisfied these requirements. All of Plaintiffs' claims for injunctive and declaratory relief are premised upon their fear that each of them might experience the so-called "revolving door" of reincarceration. They allege that they might someday return

to ODRC's custody solely as a result of Defendants' previous failure to provide them with adequate pre-release services. Plaintiffs are "afraid" that, without adequate treatment, they will commit felonies that will someday return them to ODRC's custody. This Court does not doubt that Plaintiffs suffer from the serious psychiatric conditions they allege. And the Court has no trouble accepting the argument that comprehensive pre-release planning and direct linkage with available community mental health, housing, transportation, and employment services would assist inmates with psychiatric diseases in making the transition from incarceration to the community. It is no doubt sound public and penal policy to do so. But sound public policy is not a basis for Article III standing, nor for this Court's assertion of jurisdiction. The amended complaint fails to allege the kind of **particularized, concrete harm** necessary to confer standing that is required by the Supreme Court and the Sixth Circuit.

In Los Angeles v. Lyons, 461 U.S. 95 (1983), the plaintiff alleged that a police department's chokehold policy was unconstitutional. Plaintiff had been stopped for a traffic violation and alleged that, without provocation, the officers applied a chokehold that damaged his larynx. The district court entered a preliminary injunction against further use of such holds in all situations that did not pose a threat of death or

serious bodily harm to the officer. On appeal, the Supreme Court concluded that plaintiff lacked standing to seek injunctive relief because he did not allege a "real and immediate" threat of injury from the existence of the policy. Id. at 102. The Court relied on O'Shea v. Littleton, 414 U.S. 488 (1974), which held that "[past] exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief ... if unaccompanied by any continuing, present adverse effects."

Lyons, 461 U.S. at 102, quoting O'Shea at 495-496. While not doubting Lyons' allegation that he had been illegally choked and injured by the officers, the court held that his fear that he might be subject to the chokehold in the future was entirely speculative and remote. The court also stated that the "emotional consequences of a prior act simply are not a sufficient basis for an injunction absent a real and immediate threat of future injury by the defendant. Of course, emotional upset is a relevant consideration in a damages action." Lyons, 461 U.S. at 107, n.8.

In Lynch v. Leis, 382 F.3d 642 (6th Cir. 2004), the Sixth Circuit relied on Lyons to conclude that a plaintiff lacked standing to challenge a county jail's telephone use policy for pre-trial detainees. At the time the plaintiff was added to the lawsuit, he had been released from pre-trial detention and was on bond. After extensive proceedings in the district court,

resulting in entry of a permanent injunction, the defendant appealed the award of attorney's fees to the plaintiff. The Sixth Circuit concluded that the plaintiff never had standing to prosecute his claim because he was not subject to the policy when he filed his claim, and vacated the fee award. The court noted that the risk that plaintiff might be placed in detention again was not a real and immediate threat that conferred standing. The plaintiff "... would have had to fail to appear for a scheduled court date on his pending matters, violate the conditions of his pretrial release in some other way, or commit some other conduct leading to his arrest. This chance, based on [plaintiff's] likelihood of violating unchallenged laws, is insufficient to confer Article III standing." Id. at 648.

Similarly, in White v. United States, 601 F.3d 545 (6th Cir. 2010), several gamefowl sellers alleged that sections of the Animal Welfare Act, 7 U.S.C. §§2131-2156, that prohibit the interstate shipment of fighting animals infringed their constitutional rights. They sought an injunction against its enforcement, arguing they feared false prosecution because animal control officers would assume that the animals they sold were to be used for fighting. The Sixth Circuit held that plaintiffs lacked standing because they had not demonstrated a sufficient injury in fact: "[Plaintiffs'] potential false prosecution allegations amount to a claim that, if they transport or sell

chickens across state lines for non-fighting purposes and if they are stopped by law enforcement authorities, the authorities may misinterpret the plaintiffs' intent and may wrongly prosecute them." Id. at 553. This chain of events was based on speculation and conjecture, and not upon plausible factual allegations establishing a risk of imminent or concrete harm.

See also, Knox v. McGinnis, 998 F.2d 1405 (7th Cir. 1993), concluding that a prison inmate lacked standing to seek injunctive relief barring use of a "black box" mechanism which was used to secure handcuff locks on inmates placed in administrative segregation. When the plaintiff filed suit, he had been released from segregation and had returned to the general prison population. Relying on Lyons, the Seventh Circuit concluded that "the mere possibility that at some point in the future he might be returned to segregation did not establish a "real and immediate case or controversy." Id. at 1413.

Here, all of the Plaintiffs allege that they "fear" that their various psychiatric conditions will lead them to commit future crimes that will again bring them under ODRC's custody and control, and that these fears are the result of Defendants' previous lack of services. These fears and concerns simply do not allege a real and immediate controversy that confers Article III standing, as the cases discussed above make clear.

Perhaps aware of this flaw in their complaint, Plaintiffs

respond that, even if they lack standing in the "traditional" sense, their claims fall within an exception for cases likely to be repeated but evading judicial review. They cite Olmstead v. LC, 527 U.S. 581 (1999), which addressed a lawsuit by two institutionalized mentally ill citizens seeking an injunction requiring the state to place them in the "least restrictive environment" that would be appropriate to their condition. The discussion Plaintiffs cite from that case, contained in a footnote to the Court's opinion on the merits, addressed whether the case was moot, not whether the plaintiffs had standing at the outset.

In that footnote, the Supreme Court agreed with the lower courts that the case was not rendered moot by the fact that both of the plaintiffs were by then receiving less restrictive treatment in community-based programs. Both the district court and the court of appeals found that the record demonstrated that plaintiffs had experienced continual institutional placements throughout their lives. One of the plaintiffs had been confined eighteen different times at the same psychiatric hospital, and her current community placement was unstable due to uncertain state funding. Given her past history, there was a very strong probability that she would be returned by the state to the same inpatient psychiatric hospital absent her lawsuit. The second plaintiff had been transferred to a community program by court

order after the district court had entered judgment for the plaintiffs. Due to the permanent nature of plaintiffs' disabling conditions and the facts concerning the state's long-term course of conduct with respect to their care, the Supreme Court agreed with the courts below that the controversy was "capable of repetition, yet evading review," and therefore was not moot.

The facts that Plaintiffs allege here, of their repeated involvement with the criminal justice system in general, are not comparable to the facts regarding the long-term relationship between the plaintiffs and the state that were at issue in Olmstead. Moreover, the "capable of repetition yet evading review" doctrine applies only where repetition of the challenged conduct is likely to involve the same parties. Unlike the plaintiffs in Olmstead, Plaintiffs are not under ODRC's custody or control. Plaintiffs "fear" that they will return to ODRC's custody at some point. But as discussed above, the chain of events necessary to bring about that result is too remote to assume that it will occur with any certainty. The question is not whether Plaintiffs' claims are moot, but whether Plaintiffs had Article III standing when they filed their complaint. The Court must conclude that they did not.

Even if this Court were to conclude that Plaintiffs had standing in something other than a "traditional" sense, as Plaintiffs suggest, it is entirely speculative to conclude that

any of the Plaintiffs (save for the possible exception of Guy B., who was in prison when the amended complaint was filed) would benefit from the injunctive and declaratory relief they seek. In Knox v. McGinnis, discussed above, the Seventh Circuit noted that, once the plaintiff was returned to the general prison population, the only way he would be re-segregated and subjected to use of the "black box" mechanism was if he broke prison rules sometime in the future. The court would not assume that Knox would knowingly violate prison rules, even though he had been found with prison contraband on at least two prior occasions. Here, the Court is unwilling to assume that Plaintiffs will commit felonies in the future, that will result in their convictions, that will return them to ODRC custody, and which would then allow them to benefit from any judgment requiring ODRC to provide the array of comprehensive pre-release services that the Plaintiffs seek.

The Court also finds merit in Defendants' argument that Plaintiffs have not plausibly alleged that the difficulties they have experienced were all caused by Defendants. There are simply too many factors that contribute to the problems Plaintiffs describe, including access to mental health care, finding safe and affordable housing, or securing transportation or employment. Many of the social or political factors that contribute to these problems are referenced in Plaintiffs' own allegations, such as

public funding difficulties or budget cuts, long waiting lists for medical appointments for indigents, or inadequate beds in homeless shelters. These problems cannot all be plausibly attributed to the Defendants' failure to provide pre-release services.

The same conclusions apply to the claims of Plaintiff Guy B. He alleges that if he is released without what he contends is adequate planning and services, he fears that he will reoffend or will have difficulty securing services for himself. Defendants argue that, in addition to his lack of standing, he failed to exhaust his administrative remedies prior to filing suit. Guy B. responds that his claims do not involve a "condition of confinement" that are covered by the Prison Litigation Reform Act's exhaustion requirement under 42 U.S.C. §1997e. Plaintiffs have also submitted documentation that Guy B. received a final ODRC administrative decision on July 19, 2010, after Plaintiffs filed their response memorandum. (See Doc. 27, Exhibit A)

If Guy B.'s claims relate to a condition of confinement, exhaustion is required, and the Court could dismiss his claims without prejudice to refiling after exhaustion. See, e.g., Brown v. Toombs, 139 F.3d 1102, 1104 (6th Cir. 1998), enforcing exhaustion requirement and dismissing prisoner's claims without prejudice. Plaintiffs cite an unpublished district court order finding the claims of Cook County jail inmates with mental

illness who alleged they were denied adequate access to needed medical treatment upon release, were not claims relating to a condition of confinement under the PLRA, and that exhaustion was not required. See Bolden v. Stroger, 2005 U.S. Dist. LEXIS 7473 (N.D. Ill., February 1, 2005).

But whether exhaustion is not required at all, or whether Guy B. had filed his claims after he exhausted the ODRC grievance process, the Court finds that Guy B. lacks standing to seek relief for the same reasons discussed above with respect to the other Plaintiffs. His fears about his future, or how and where he might receive treatment when he is released, are insufficient to establish a concrete injury. This conclusion is bolstered by the result that the district court ultimately reached in Bolden. There, the county jail inmates alleged that the majority of them were released from confinement without medication or discharge plans necessary to manage their psychiatric illnesses. They alleged that the lack of such plans may lead them to abuse drugs or alcohol, may cause their arrest or incarceration, or may result in hospitalization or institutionalization. Plaintiffs sought injunctive and declaratory relief, prohibiting the defendants from releasing mentally ill prisoners without pre-release planning and medication. The district court concluded the plaintiffs lacked standing, finding that the potential injuries plaintiffs alleged were speculative and hypothetical,

and were not the sort of particularized harm, or imminent threat of harm, necessary to establish standing. The Court reaches the same conclusion here with respect to Guy B.'s claims.

For all of these reasons, the Court must conclude that none of the Plaintiffs have established that they have standing to seek the relief requested in their amended complaint. This Court therefore lacks jurisdiction over the asserted claims.

3. Plaintiffs' Statutory and Constitutional Claims.

The amended complaint seeks injunctive relief under a number of different statutes, including the Medicaid Act, the Food Stamp Act, and the Americans with Disabilities Act, and constitutional claims of due process violations and deliberate indifference to medical needs. Defendants have raised a number of arguments addressed to the merits of these claims, and Plaintiffs have responded to those arguments. The Court's conclusion with respect to Plaintiffs' standing applies to all of their claims for injunctive and declaratory relief. Therefore, the Court need not address the additional arguments raised in the parties' briefs with respect to the merits of each of these claims.

CONCLUSION

For all of the foregoing reasons, Defendants' motion to dismiss the original complaint (Doc. 15) is denied as moot. Defendants' motion to dismiss the amended complaint (Doc. 19) and the motion for leave to file an oversized brief (Doc. 17) are

granted. Defendants' motion for an order to show cause (Doc. 20) is denied as moot. Plaintiffs' claims are hereby dismissed with prejudice.

SO ORDERED.

THIS CASE IS CLOSED.

Dated: January 26, 2011

s/Sandra S. Beckwith

Sandra S. Beckwith

Senior United States District Judge